

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

ERIC CINA,

Case No. 3:23-CV-00384-CLB¹

Plaintiff,

ORDER DENYING MOTION FOR LEAVE TO AMENDED COMPLAINT

v.

[ECF No. 32]

GONZALES, *et al.*,

Defendants.

10 Before the Court is Plaintiff Eric Cina’s (“Cina”) motion for leave to file a second
11 amended complaint, along with the proposed second amended complaint. (ECF Nos. 32;
12 32-1.) Defendants Marvin Gonzales and Nevada Department of Corrections (“NDOC”)
13 (collectively referred to as “Defendants”) opposed the motion, (ECF No. 34). Cina had
14 until August 5, 2025 to file a reply but as of the date of this order, failed to do so. For the
15 reasons discussed below, Cina’s motion for leave to file an amended complaint, (ECF
16 No. 32), is denied.

17 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

18 Cina is an inmate in the custody of the Nevada Department of Corrections
19 ("NDOC") and is currently housed at the Lovelock Correctional Center ("LCC"). Cina
20 initiated this action on August 4, 2023, by filing a civil rights complaint. (ECF No. 1-1.)

Pursuant to 28 U.S.C. § 1915A, the District Court screened Cina's complaint on June 18, 2024, and allowed him to proceed on a First Amendment retaliation and conspiracy claim against Defendant Gonzales and Doe Defendants and an Eighth Amendment excessive force claim against Doe Defendants. (ECF No. 3.) The District Court filed his complaint and entered a stay to allow the parties an opportunity to settle the case. (*Id.*; ECF No. 4.)

²⁷ The parties consented to having the undersigned conduct all proceedings and
²⁸ order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Federal
Rule of Civil Procedure 73. (ECF No. 23.)

1 On June 24, 2024, Cina filed his first amended complaint which was stricken on
 2 July 12, 2024 by the District Court for failure to sign the proposed amended complaint.
 3 (ECF No. 7.) Cina refiled his first amended complaint on July 17, 2024. (ECF No. 8.) The
 4 District Court screened and found the first amended complaint to be the operative
 5 complaint and allowed Cina to proceed on a First Amendment retaliation claim against
 6 Gonzales and Doe Defendants, a First Amendment conspiracy claim against Gonzales
 7 and Doe Defendants, and an Eighth Amendment excessive force claim against Doe
 8 Defendants. (ECF No. 11.)

9 The parties failed to reach a settlement at mediation, (ECF No. 13), and
 10 Defendants file their answer on December 2, 2024, (ECF No. 16.) Following a case
 11 management conference, the Court entered a scheduling order and discovery plan. (ECF
 12 Nos. 20; 21.) The scheduling order in this case required any amended pleadings to be
 13 filed by March 7, 2025. (ECF No. 21 at 6.) On July 15, 2025, over four months after the
 14 deadline to amend his pleadings, Cina filed the instant motion for leave to amend, along
 15 with his proposed second amended complaint. (ECF Nos. 32, 32-1.) Defendants opposed
 16 the motion. (ECF No. 34.) Cina had until August 5, 2024, to file his response but as of the
 17 date of this Order, failed to do so.

18 **II. LEGAL STANDARD**

19 Federal Rule of Civil Procedure 15(a)(2) instructs that “[t]he court should freely
 20 give[] leave [to amend a pleading] when justice so requires.” The Ninth Circuit has made
 21 clear Rule 15(a) permits liberal application. *Sonoma Cnty. Ass’n of Retired Emps. v.*
 22 *Sonoma Cnty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). Under Rule 15(a), courts consider
 23 various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing
 24 party; (4) the futility of the amendment; and (5) whether the plaintiff has previously
 25 amended his complaint. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir.
 26 2014). The factors do not weigh equally; rather, prejudice receives the greatest weight.
 27 *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (citing *Eminence*
 28 *Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)).

1 Defendants bear the burden of establishing prejudice, and absent its presence or
 2 a “strong showing” under the other factors, there is a presumption in favor of permitting
 3 amendment. *Eminence Cap., LLC*, 316 F.3d at 1052 (citing *DCD Programs, Ltd. v.*
 4 *Leighton*, 833 F.2d 183, 186-87 (9th Cir. 1987)). When considering prejudice, the court
 5 may weigh against the movant the amended pleading’s great alteration of the litigation’s
 6 nature that requires the opposing party to defend against “different legal theories and . . .
 7 different facts.” *AmerisourceBergen Corp. v. Dialysis W., Inc.*, 465 F.3d 946, 953 (9th
 8 Cir. 2006) (internal quotation omitted). Alone, such alteration is not fatal. *Morongo Band*
 9 *of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

10 By contrast, futility “alone can justify the denial of a motion for leave to amend.”
 11 *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2003) (quoting *Bonin v. Calderon*, 59 F.3d
 12 815, 845 (9th Cir. 1995)). Futility arises when the amendment is legally insufficient,
 13 *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017), or where the amended
 14 complaint would be subject to dismissal, such as when it violates the statute of limitations.
 15 *Platt Elec. Supply, Inc. v. EOFOF Elec., Inc.*, 522 F.3d 1049, 1060 (9th Cir. 2008).

16 **III. DISCUSSION**

17 On July 15, 2025, Cina filed the instant motion for leave to file a second amended
 18 complaint. (ECF No. 42.) Cina seeks to amend his complaint in several ways. He first
 19 seeks to pursue a fourth claim under the Eighth Amendment for improperly denying him
 20 access to medical care. (ECF No. 32-1 at 10.) He alleges Investigator Fonoimoana,
 21 Senior Correctional Officer Few, and Officer Pascual denied him access to health care
 22 on August 4, 2022. (*Id.*) Defendants point out that Cina never previously asserted a claim
 23 of improper denial of access to medical in his prior complaints. (ECF No. 34 at 4 (citing
 24 ECF Nos. 4; 8.) Defendants argue this claim is untimely and futile and that Cina does not
 25 provide any good cause as to why this claim should be permitted nearly five months after
 26 the deadline to move to amend his complaint. (*Id.* at 5.)

27 Cina also seeks to name Officer Pascual under his excessive force claim. (ECF
 28 No. 32-1 at 7-9.) Defendants argue they provided Cina with the names of the officer who

1 took part in the August 4, 2022 search on February 10, 2025, which gave Cina more than
 2 sufficient time to amend his complaint prior to the March 7, 2025 deadline. (ECF No.
 3 34 at 5.)

4 Federal Rule of Civil Procedure 16(b)(4) governs the modification of scheduling
 5 orders and discovery plans. Fed. R. Civ. P. 16(b)(4) provides that “[a] schedule may be
 6 modified only for good cause and with the judge's consent.” The good cause inquiry
 7 focuses primarily on the movant's diligence. *DRK Photo v. McGraw-Hill Global Educ.*
 8 *Holdings, LLC*, 870 F.3d 978, 989 (9th Cir. 2017).

9 Local Rule 26-3 supplements Fed. R. Civ. P. 16 and provides that discovery plans
 10 and scheduling orders may be modified for good cause, provided that a motion to extend
 11 is made “no later than 21 days before the expiration of the subject deadline.” See LR 26-
 12 3; *see also* LR IA 6-1. “Good cause” is a non-rigorous standard that has been construed
 13 broadly across procedural and statutory contexts. See *Ahanchian v. Xenon Pictures,*
 14 *Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). Requests for extensions of time made before
 15 the applicable deadline has passed should “normally … be granted in the absence of bad
 16 faith on the part of the party seeking relief or prejudice to the adverse party.” *Id.* (*citing*
 17 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1165 (3d
 18 ed. 2004)).

19 Moreover, pursuant to Local Rule 26-3, any request made after this 21-day period
 20 will only be granted if “the movant also demonstrates that the failure to act was the result
 21 of excusable neglect.” LR 26-3. “Excusable neglect” is a flexible, equitable concept, but
 22 “inadvertence, ignorance of the rules, or mistakes construing the rules do not usually
 23 constitute ‘excusable’ neglect.” *Kyle v. Campbell Soup Co.*, 28 F.3d 928, 931 (9th Cir.
 24 1994) (*citing Pioneer Inv. Servs. v. Brunswick Assocs.*, 507 U.S. 380, 391-92 (1993)).

25 In determining whether neglect is excusable, the Court must consider the
 26 following factors: (1) the danger of prejudice to the opposing party; (2) the length of the
 27 delay and its potential impact on the proceedings; (3) the reason for the delay; and (4)
 28 whether the movant acted in good faith. *Bateman v. U.S. Postal Service*, 231 F.3d 1220,

1 1223-24 (9th Cir. 2000) (internal quotations omitted) (citing *Pioneer*, 507 U.S. at 395).
2 The Court should “take into account all the relevant circumstances” when considering
3 these factors. *Cap. One, Nat'l Ass'n v. SFR Inv. Pool 1, LLC*, No. 2:17-cv-00604-RFB-
4 NJK, 2020 WL 6271199 at *4 (D. Nev. Oct. 26, 2020); *see also Pioneer*, 507 U.S. at 395.

5 The Court finds Cina’s motion to amend to be untimely. Cina asserts he seeks to
6 amend in “good faith,” but he does not provide any reason why he waited more than four
7 months following the deadline to amend his complaint to file this motion. (See ECF No.
8 32.) Good cause or excusable neglect could warrant extend time to the file, but Cina does
9 not assert a reason why he was unable to seek amended before March 7, 2025. Thus,
10 Cina’s motion does not warrant extending time to file his motion for leave to amend.

11 However, even if the motion to amend was not untimely, reviewed Cina’s proposed
12 amended pleading, which seeks to add a new claim and substitute a defendant, the Court
13 also finds that the bulk of the *Desertrain* factors weigh against allowing amendment.
14 Cina’s new Eighth Amendment claim for improper denial of access to medical care is
15 likely futile because he seeks the claim past the two-year statute of limitations. See
16 *Pamplin v. Baker*, No. 3:20-CV-00043-MMDCLB, 2022 WL 17418573, at *4 (D. Nev. Nov.
17 15, 2022), *report and recommendation adopted*, No. 3:20-CV-00043-MMD-CLB, 2022
18 WL 17418037 (D. Nev. Dec. 5, 2022) (“[I]n Nevada, the statute of limitations for § 1983
19 actions is two years.”). Furthermore, substituting Defendant Gonzales as part of Cina’s
20 third claim and permitting Cina to pursue his new claim would cause undue delay and
21 prejudice with regards to extensions of discovery and service upon new defendants.
22 Therefore, the Court concludes that amendment is improper, and accordingly, Cina’s
23 motion is denied.

24 **IV. CONCLUSION**

25 For good cause appearing and for the reasons stated above, **IT IS ORDERED** that
26 Cina’s motion for leave to file an amended complaint (ECF No. 32) is **DENIED**.

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IT IS FURTHER ORDERED that the first amended complaint, (ECF No. 8), screening order (ECF No. 11), and scheduling order, (ECF No. 21), remain operative in this case.

DATED: August 7, 2025

UNITED STATES MAGISTRATE JUDGE